

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

THE 4D FACTORY, LLC, *et al.*,

*Debtor.*¹

Chapter 11

No. 23-11618 (MEW) (Subchapter V Cases)

(Jointly Administered)

**DECLARATION OF JACOB D. ALDERDICE IN SUPPORT OF
NEON SHAREHOLDERS' MOTION FOR AN ORDER DECLARING AUTOMATIC
STAY INAPPLICABLE, OR IN THE ALTERNATIVE, GRANTING
RELIEF FROM AUTOMATIC STAY**

I, JACOB D. ALDERDICE, hereby declare under penalty of perjury pursuant to 28 U.S.C.

§ 1746, as follows:

1. I am an attorney admitted to practice before this Court and a partner of Jenner & Block LLP, a law firm with offices in Chicago, Illinois; Los Angeles, California; New York, New York; San Francisco, California; Washington, D.C.; and London, United Kingdom.² I am currently resident in Jenner & Block's New York office, located at 1155 Avenue of the Americas, New York, New York 10036. I am a member in good standing of the bar of the State of New York, and there are no disciplinary proceedings pending against me.

2. I am counsel for Mark Long, Colin Foran, Naomi Lackaff, Aaron Nonis, Don Norbury, and Mark Yeend (together, the "Neon Shareholders"). I respectfully submit this Declaration in support of the Neon Shareholders' *Motion for an Order Declaring Automatic Stay*

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are 4D Factory Inc. (6770), and The 4D Factory LLC's (8935). As used herein, the "Debtor" refers to The 4D Factory LLC.

² The London office is operated by a separate partnership, Jenner & Block London LLP, which is affiliated with Jenner & Block.

Inapplicable, or in the Alternative, Granting Relief from Automatic Stay (the “Automatic Stay Motion”).

3. I am also counsel to the Neon Shareholders in a derivative action filed by the Neon Shareholders on November 27, 2023 in the Delaware Chancery Court, *Long et al. v. Javarone et al.*, Case No. 2023-1186 (Del. Ch. Nov. 27, 2023) (the “Derivative Action”), on behalf of Neon Machine, Inc. (“Neon”), the innovative gaming studio that the Neon Shareholders co-founded together and have operated for over two years. The Neon Shareholders filed the Derivative Action against three directors of Neon’s Board who, together, control the Board and are acting to serve their own personal interests while exposing Neon to significant harm: Cort Javarone, Scott Honour, and Steven Horowitz (collectively, the “Director Defendants”).

4. Attached as **Exhibit 1** is a true and correct copy of Plaintiffs’ Verified Complaint in the Derivative Action.

5. Attached as **Exhibit 2** are true and correct copies—redacted and proposed to be filed under seal—of the Simple Agreements for Future Equity (“SAFEs”) entered on September 29, 2021 between Neon and Griffin Gaming Partners II Side Fund, L.P. (“Griffin”), and entered on September 30, 2021 between Neon and Polychain Ventures II L.P. (“Polychain”).

6. Attached as **Exhibit 3** is a true and correct copy of Plaintiffs’ Motion for Expedited Proceedings in the Derivative Action.

7. Attached as **Exhibit 4** is a true and correct copy—redacted and proposed to be filed under seal—of the January 13, 2023 document titled “Action by Written Consent of the Sole Director of Neon Machine, Inc.”

8. Attached as **Exhibit 5** is a true and correct copy—redacted and proposed to be filed under seal—of the September 14, 2023 letter from Griffin to Mark Long re: “SAFE Conversion.”

9. Attached as **Exhibit 6** is a true and correct copy of the November 10, 2023 letter from Todd. C. Toral of Jenner & Block LLP to Cort Javarone of The 4D Factory, LLC and Robert J. Spence of Spence Law Office, P.C.

10. Attached as **Exhibit 7** is a true and correct copy of the November 30, 2023 letter from Robert J. Spence to Kevin M. Coen of Morris, Nichols, Arsh & Tunnell, LLP, and to Todd C. Toral and Jacob D. Alderdice of Jenner & Block LLP regarding the Derivative Action.

11. Attached as **Exhibit 8** is a true and correct copy of the December 1, 2023 letter from Todd. C. Toral of Jenner & Block LLP to Robert J. Spence of Spence Law Office, P.C.

Dated: New York, New York
December 4, 2023

/s/ Jacob D. Alderdice
Jacob D. Alderdice